FAIR PRACTICES ADVOCATE

2013 ANNUAL REPORT

An independent office working to ensure fair practices at the Workers Compensation Board of Manitoba

Table of Contents

Message from the Fair Practices Advocate 3

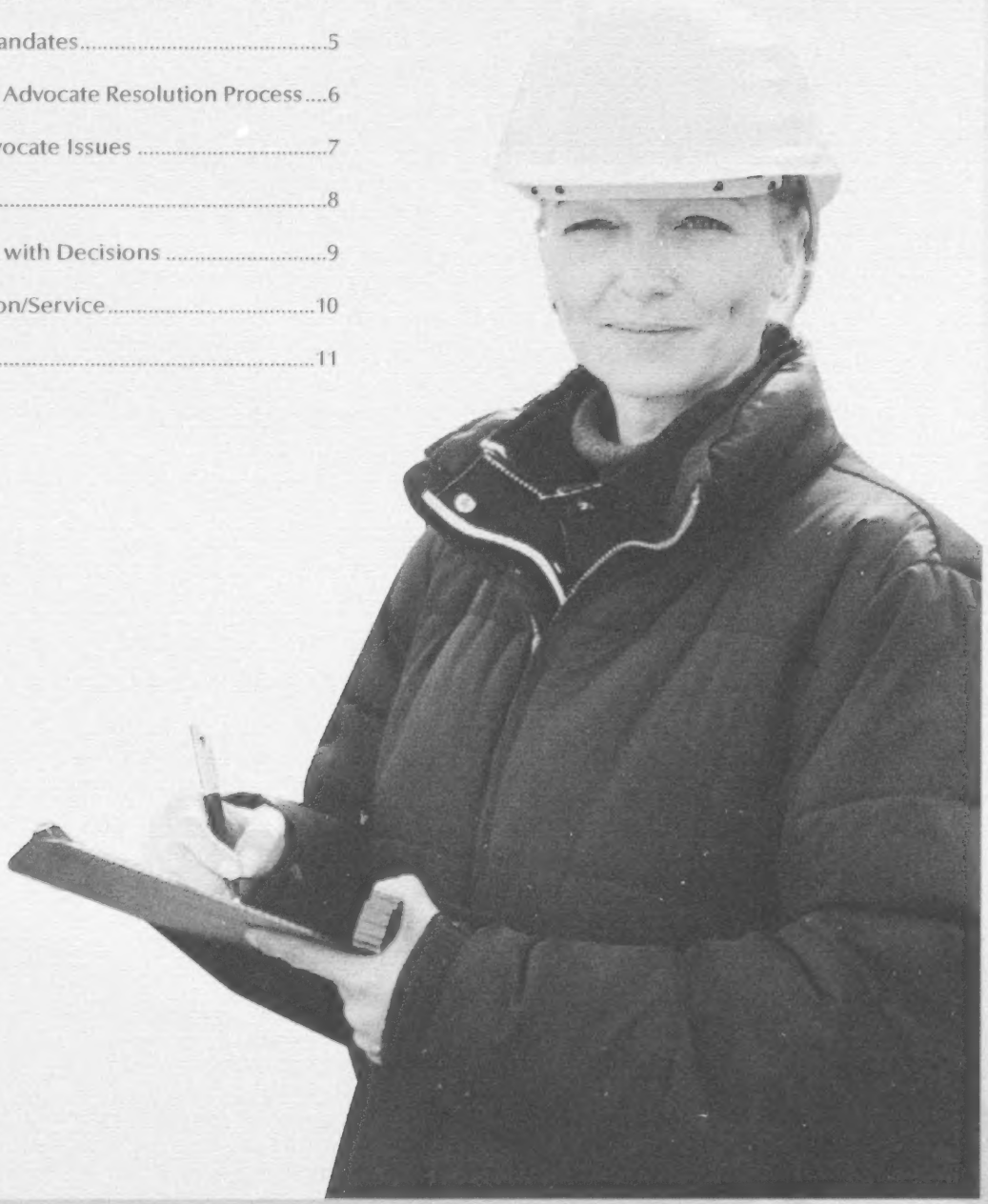
Overview 4

Differences in Mandates 5

The Fair Practices Advocate Resolution Process 6

Fair Practices Advocate Issues 7

- Information 8
- Disagreement with Decisions 9
- Communication/Service 10
- Timeliness 11



Message from the Fair Practices Advocate

Preparing this annual report is an opportunity for Sandra Payette, the Fair Practices Representative, and me to review our past year in detail. We remember with satisfaction those situations where our efforts had a significant positive impact in someone's life, and sometimes second-guess the decisions we made. In the work we do, we are always learning and that keeps us engaged and ready for the challenges of 2014.

As we begin compiling the annual report, we are always interested to know if the total number of issues raised with our office has changed. Between 2009 and 2012, there were annual increases in the number of issues. Once we compiled our statistics for 2013 and compared them to the previous years', we saw that the issues raised in 2013 dropped to 430 from 508 in 2012; this represents a 13% decrease.

The category of issues that accounts for the biggest change is "Timeliness" where the number of issues dropped by 36%. These decreases reflect well on the WCB's willingness to respond to suggestions for improvement from our office and to continually improve training, processes, and infrastructure needed to deliver efficient and effective services to injured workers and employers.

In 2013, we completed introducing our new visual identity and updated the content of our brochure and website. We have plans to add more pages to our website in the coming year. With our new look in place, we are now ready to begin an outreach campaign to ensure that workers and employers who need our services will know about us, or someone in their family or community will be able to refer them to us.

This coming year is the 25th anniversary of the creation of the office of the Fair Practices Advocate at the WCB of Manitoba. Our goal for our anniversary year is to celebrate our successes over the past 25 years of service and to renew our commitment to providing timely and quality assistance so that when workers and employers receive services from the WCB, those services are delivered fairly.

Deana Martz
Fair Practices Advocate

Impartial | Confidential | Independent

Overview

The Fair Practices Advocate (FPA) is the organizational ombudsman for the Workers Compensation Board of Manitoba.

The Fair Practices Advocate:

- listens to the concerns raised by injured workers, their dependents, and employers
- pursues the resolution of issues
- identifies recurring fair practices issues and reports them to the WCB.

Three main principles guide the work of the Fair Practices Advocate:

- Impartiality – The Fair Practices Advocate reviews all issues impartially and makes recommendations that promote fair practice.
- Confidentiality – All inquiries received by the Fair Practices Advocate are confidential, unless an intervention is requested.
- Independence – The Fair Practices Advocate serves injured workers, employers, and the WCB, but works independently in the interest of fairness.

The Meaning of Fairness

Although only four letters long, the word "fair" has many meanings and nuances.

When we think of fairness in our personal lives, we often use the term "fair" when we mean "fortunate." An event that has a negative impact on our life is indeed unfortunate or not "fair," in that sense of the word.

At the office of the Fair Practices Advocate, when we consider whether a decision or action is fair, we consider many factors, including:

- The process – was there a thorough investigation of the facts; are the facts upon which a decision was based documented on the claim file; was the decision-maker impartial and open-minded; and did the decision-maker appropriately exercise discretion?
- The decision – is the decision supported by the facts; are there clear reasons for a decision; is the decision in accord with legislation, policies, guidelines and acknowledged practices; does the decision demonstrate that the decision-maker considered all the facts and issues; and does the decision explain why the decision-maker reached that particular decision?
- The communication – was the worker or employer treated with respect and courtesy; was the WCB staff person willing to listen; were phone calls returned and were questions fully answered?

After a thorough investigation of the process followed, we then determine whether a WCB decision or action was "fair."

Differences in Mandates

Fair Practices Advocate, Review Office, Appeal Commission

The Fair Practices Advocate and the appeal mandates of the Review Office and Appeal Commission complement rather than duplicate one another. This is reflected in two differences in their respective mandates:

Range of Issues

Many of the issues brought to the Fair Practices Advocate lie outside of appeal mandates, such as the timeliness of adjudication and processing of benefits, courtesy and communication, and the need for apology when things have gone wrong.

Authority to Make Recommendations vs. Changing Decisions

The Review Office and the Appeal Commission each have the authority to change a decision if they conclude that the weight of the evidence, based on a balance of probabilities, does not support the original decision made by a WCB adjudicator or case manager.

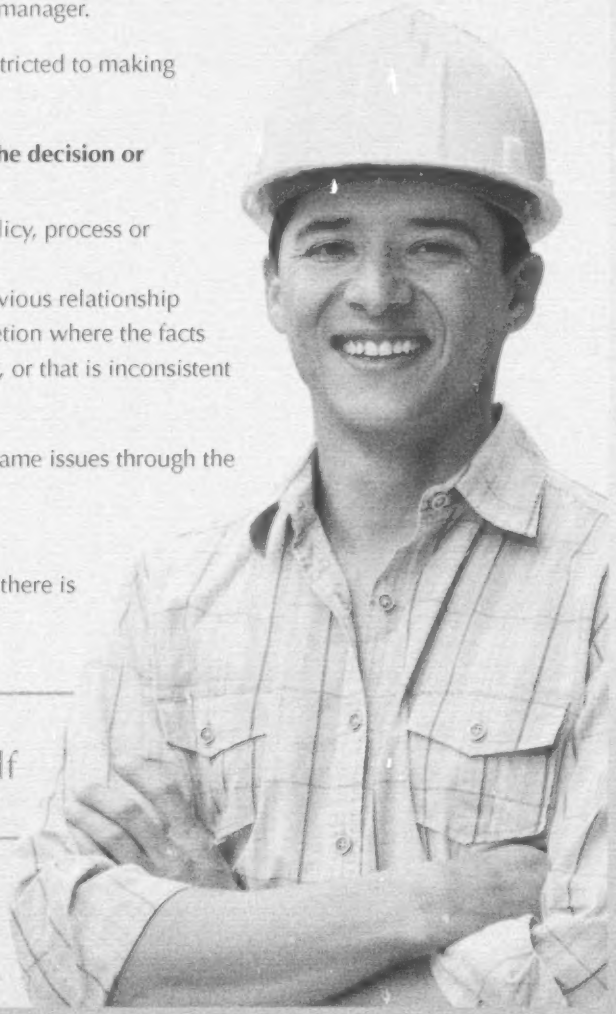
The Fair Practices Advocate's mandate is narrower; it is restricted to making recommendations for change.

Recommendations to change decisions are made only if the decision or action of the WCB is determined to be:

- clearly wrong – a decision that clearly departs from policy, process or procedure, or
- clearly unreasonable – a decision where there is no obvious relationship to the facts, that results from a refusal to exercise discretion where the facts call for its exercise, that cannot be rationally explained, or that is inconsistent with other decisions with similar circumstances.

This is a more stringent test than would be applied to the same issues through the appeals process.

The Fair Practices Advocate can also recommend further investigation if there is a lack of relevant information, or if there is contradictory information that has not been clarified.



We investigate fairness on your behalf

The Fair Practices Advocate Resolution Process

When we receive complaints or inquiries, we typically use the following process to seek resolution of issues:

1. If a caller has not already done so, we encourage the caller, where appropriate, to address the issue with the WCB staff person most directly responsible for the issue.

2. If the issue is left with the Fair Practices Advocate, we assess it to determine if there is a fairness issue to be addressed. Depending on the issue, we may consider the following questions to make this determination:

- Is there an issue of timeliness that can be addressed?
- Is there a communication issue that needs to be resolved?
- Does the caller require more information to understand WCB processes and policies?
- Was the claim investigated adequately?
- Did the caller have an opportunity to make their case and be heard by the decision-maker?
- Is there a reasonable and logical connection between the facts of the case and the decision reached?
- Was the rationale for the decision clearly explained?
- Is the decision consistent with WCB legislation and policy?
- If a mistake was made, was it acknowledged and, when possible, corrected?
- Did the WCB respond fairly and respectfully if the caller felt poorly treated?

3. If the Fair Practices Advocate determines that no fairness issue is involved, we will explain this to the caller.

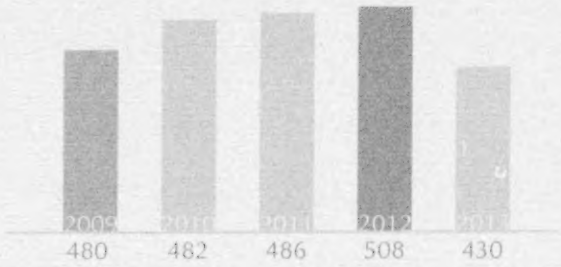
4. If there is a fairness issue that requires further investigation or action, the Advocate contacts WCB management to discuss steps to resolve the issue. If the issue remains unaddressed, the Advocate will approach senior management to discuss options for resolution.

5. The Fair Practices Advocate contacts the caller with the results. Depending on the circumstances, results might include a change in decision, further investigation, an apology, or the clarification of reasons for a decision.

Fair Practices Advocate Issues

Injured workers and employers contact the Fair Practices Office with a variety of concerns and issues. In 2013, there were 430 issues raised.

TOTAL NUMBER OF ISSUES RAISED 2009 - 2013

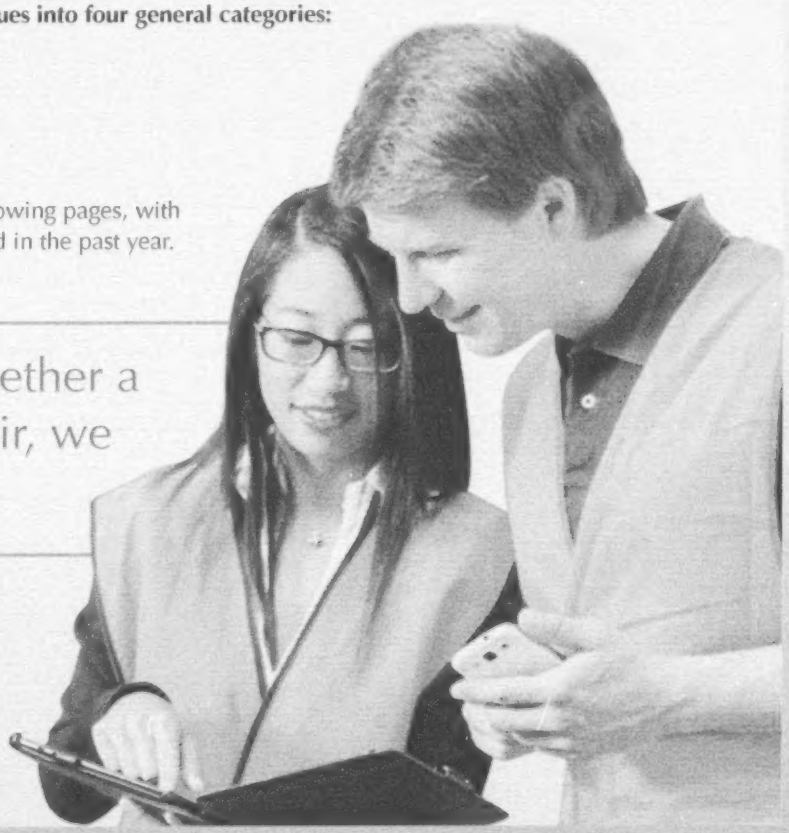


For reporting purposes, we group the issues into four general categories:

1. Information
2. Disagreement with Decisions
3. Communication/Service
4. Timeliness

The four groups are described on the following pages, with examples of actual issues brought forward in the past year.

When we consider whether a decision or action is fair, we consider many factors.



Information

This category relates to requests for information about any of the following three areas of concern:

- Policies, procedures, and legislation – Callers request an explanation or confirmation of what they were told by WCB staff about the content or interpretation of WCB policies and procedures or The Workers Compensation Act.
- Status of claim – Callers want to know how some aspect of their claim is proceeding.
- Referrals – Callers seek information or assistance that the Fair Practices Office cannot provide, but can be provided by a different office of the WCB or by an external organization.

INFORMATION ISSUES 2009 - 2013

Examples of this Issue

- A worker believed there was a difference of opinion between the WCB's medical officer and his physician on a medical matter affecting his entitlement to compensation. As a result, the worker requested the matter be referred to a medical review panel, as provided for in the WCB Act. The Act requires that the opinion of a physician be expressed in a certificate of the physician in writing. The worker supplied certified opinions from a physician and a chiropractor. When the request was granted it was based on the certificate of the physician only.

  The worker's union representative called the FPA to ask why, considering the chiropractor's knowledge of the matter, the chiropractor's certificate was not considered in granting the request. We advised the union representative that the Act refers to a certificate from a physician only but the chair of the medical review panel could invite any other health care provider that the chair considers appropriate to attend the panel meeting to discuss the matter.

- A worker called the FPA to ask for assistance in obtaining medical records from a former doctor for a 10-year time span. We explained that our mandate extends to acts, omissions and unfair practices of the WCB so were unable to assist: however, we gave suggestions for how he might begin searching for his records.

- A worker called the FPA because he was worried his employer would ask him to work outside his restrictions. We suggested he take the letter outlining his restrictions to work to show his employer if necessary. We suggested he call his case manager if there were any problems and let him know he could call us again if he had any problems.

Disagreement with Decisions

This category deals with disagreements with WCB decisions on claims or benefits. The Fair Practices Advocate addresses this issue when either the decision is clearly wrong or clearly unreasonable, or when the investigation has been insufficient to support the decision.

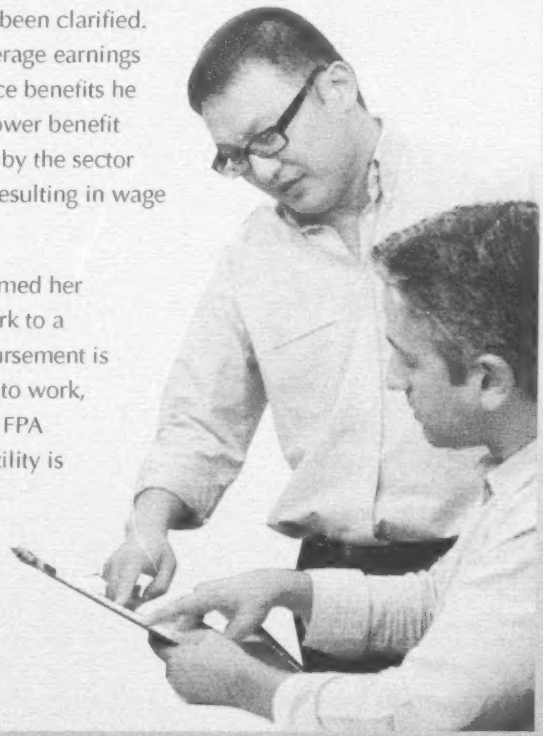
In 2013, we received 175 disagreements with decisions. After we reviewed the complaints, we made recommendations for further investigation or found the decision to be clearly wrong or unreasonable in approximately 18 per cent of the complaints; we made no recommendations on the remaining 82 per cent.

DISAGREEMENT WITH DECISIONS 2009 - 2013

Examples of this Issue

- An injured worker disagreed with the amount of his wage loss benefits which were based on a calculation of his "average earnings." Depending on a worker's individual circumstances, WCB staff may exercise significant discretion when calculating average earnings. Upon FPA review, several issues were identified with the calculation. For example, the employer supplied contradictory accounts of lay-offs and these had not been clarified. Further, even though this worker had not been laid off, his average earnings were calculated using an estimate of his Employment Insurance benefits he would have received had he been laid off. This resulted in a lower benefit rate. The FPA recommended that this calculation be reviewed by the sector manager. As a result, the average earnings were recalculated resulting in wage loss adjustment due to the claimant of $4,760.00.

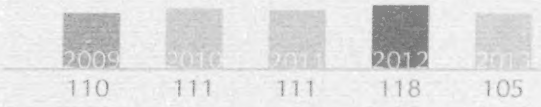
- An injured worker disagreed with the decision letter that informed her she would not be paid mileage for travel from her place of work to a physiotherapy clinic because, "Under the travel policy, reimbursement is made for mileage incurred over and above your normal travel to work, to the nearest medical facility to your place of residence." The FPA pointed out that the phrase referring to the nearest medical facility is not a correct statement of policy and recommended that the facts of this worker's situation be considered with reference to the policy; when facts of this particular situation were reconsidered in light of policy, the decision was reversed and the worker received payment for the travel to attend treatment.



Communication/Service

Communication/Service issues relate to dissatisfaction with the service or communication provided by WCB staff. Typical examples may include unclear communication, difficulty in contacting staff and in having calls returned, lack of appropriate management of a case, or communication that the caller perceived as being disrespectful or unprofessional.

COMMUNICATION/SERVICE ISSUES 2009 - 2013



Examples of this Issue

- The injured worker was a nurse. She believed a certain medical condition arose from her injury but her case manager, after consulting a WCB medical advisor, decided that the condition was not related to her original injury and sent a decision letter to that effect. The worker called the FPA because she said that when she called her case manager to discuss the decision, he was unable to explain how it was that the condition could not have arisen from the injury and repeatedly told her she could appeal his decision if she did not agree. Upon review of the file, it was noted that neither the medical opinion nor the decision letter offered an explanation for the decision. While all workers are entitled to receive reasons for decisions, it is likely that a nurse would be able to understand a more detailed explanation but the decision letter provided no rationale. The FPA's recommendation that a revised decision letter be sent that included detailed reasons for the decision was accepted. While the worker still disagreed with the decision, she now had the details needed to launch an appeal.

- After an injury, a worker returned to his pre-accident job but with permanent restrictions. His employer had accommodated the worker by assigning a helper to do the tasks outside his restrictions.

  The worker called the FPA because he said that even with a helper, many routine duties were outside his restrictions and if he did not do them, his work would not get done. He felt he had been unsuccessful in explaining this to either his employer or case manager, and that he was not getting the support he needed. In fact, the worker said he was told that only he can decide if he was going to work outside his restrictions or not.

  The FPA contacted the sector manager and recommended an in-person meeting for the worker, case manager and employer. The sector manager agreed because it was important for everyone "to be on the same page" so there would be a satisfactory long-term safe return to work for this worker. The FPA suggested that the worker prepare for the meeting by drawing up a list of job tasks that he believed were outside his restrictions.

Timeliness

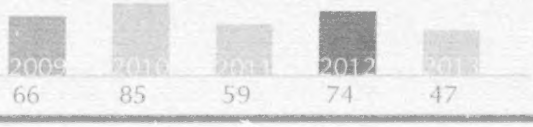
This category includes complaints from injured workers and employers who believe the WCB has taken longer than acceptable to make decisions or take actions on claims.

The range of issues addressed by the Fair Practices Advocate under this category includes delays in:

- making initial decisions to accept or deny claims
- issuing benefits after acceptance of a claim
- obtaining medical opinions from WCB's Healthcare department
- decisions on medical aid and delays in the implementation of a decision by the Review Office or the Appeal Commission

In previous years, we reported delays in two categories: Process Delays and Unadjudicated Claims. As of 2013, they are reported together as Timeliness. The total issues raised as process delays and unadjudicated claims for 2009 to 2012 have been added together in order to provide a comparison to total Timeliness issues for 2013.

PROCESS DELAY ISSUES 2009 - 2013



An Example of this Issue

- As it appeared that an injured worker had likely reached maximum improvement, the next step was to determine if his temporary work restrictions were going to be permanent. If they were, this might have an impact on whether the employer would be able to accommodate the worker in his pre-accident position or whether another position might have to be found for the worker. These questions were vitally important to both the worker and employer.

  In order to answer these questions, the worker completed a test to determine his safe maximum lifting capacity, range of motion and strength. The test results were to be reviewed by a WCB medical consultant and then the worker might need to be examined by the consultant. Once those steps were complete, the case manager would be able to make a decision on whether his restrictions would be classed as permanent.

  The test was completed on July 3 and the worker called the FPA at the end of July because as he said, he did not know what was going on and his case manager had told him she would not have an answer for him until the end of August.

  Upon review of this worker's file, we could see that the WCB medical consultant had not yet been asked to review the test results. As the case manager was on summer holidays until mid-August, it was unlikely that the steps needed to determine the status of restrictions would be complete by the end of August.

  On behalf of the worker, the FPA contacted the sector manager to ask if the case manager covering for the vacationing case manager could forward the test results and ask for the consultant's opinion. The sector manager agreed and six business days after calling the FPA, the worker was advised that his restrictions were considered permanent. With that decision, all the parties could move to the next step of this worker's return to work.

FAIR PRACTICES
ADVOCATE

Phone: 204-954-4467 (Winnipeg)
Toll-free: 1-800-362-3340

Write: Fair Practices Advocate
333 Broadway, Winnipeg, MB R3C 4W3

E-mail: fpo@wcb.mb.ca
Website: www.fairpracticesofficemb.ca